

HONORABLE DAVID ESTUDILLO

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

ELIAS PEÑA, ISAAH HUTSON, and
RAY ALANIS,

Plaintiffs,

v.

CLARK COUNTY, WASHINGTON,

Defendant.

NO. 3:21-cv-05411-DGE

**MOTION TO EXCLUDE NON-
DISCLOSED WITNESS**

Note on Motion Calendar: May 22, 2023

Plaintiffs respectfully moves the Court to exclude Pat Cosgrove, a Crew Chief in the Roads Division of the Clark County Public Works Department, from testifying at trial. Defendant did not disclose Cosgrove in its initial disclosures and added Cosgrove for the first time to their final witness list in the Amended Pretrial Order on May 12. *Compare* Dkt. 95, *with* Dkt. 78. Cosgrove is Ray Alanis' current supervisor.

On May 17, Plaintiffs' counsel reached out to Defendant's counsel regarding whether they would stipulate to exclude Cosgrove or otherwise explain why the late edition was justified. As of this filing, Defendant's counsel has not responded, which leaves Plaintiffs no choice but to seek relief from the Court. See Decl. Roger Townsend.

Fed. R. Civ. P. 26 governs the general duty to disclose information to opposing counsel. Defendant is required to provide "the name and, if not previously provided, the

1 address and telephone number of each witness—separately identifying those the party
 2 expects to present and those it may call if the need arises.” Fed. R. Civ. P. 26 (a)(3)(A)(I).
 3 Defendant is required to do so “at least 30 days before trial” unless otherwise ordered
 4 by this Court. Fed. R. Civ. P. 26 (a)(3)(A)(B). If Defendant fails to disclose a witness
 5 under the time requirements of Fed. R. Civ. P. 26(a), Defendant cannot use that witness
 6 for evidence at trial “unless the failure was substantially justified or is harmless.” Fed. R.
 7 Civ. P. 37 (c)(1).
 8

9 Defendant failed to disclose Cosgrove as a witness. As his employer, Defendant
 10 has no excuse for the failure, and the failure to disclose this witness in a timely and
 11 proper manner has prevented Plaintiffs from adequately investigating and or deposing
 12 this witness prior to trial, which prejudices Plaintiffs. As a result, Plaintiffs respectfully
 13 request this court exclude Pat Cosgrove from testifying at trial.
 14

15 DATED: May 18, 2023.

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